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SUPPLEMENTARY
MEETING

SUPPLEMENTARY HUMAN DIMENSION
MEETING
ON

"Hate Crimes -
Effective Implementation of Legislation"

4 - 5 MAY 2009
VIENNA

FINAL REPORT

I. SUMMARY

The first OSCE Supplementary Human Dimension Meeting of 2009 was devoted to hate crimes legislation and its effective implementation. It was held in Vienna on 4 -5 May. A total of 145 participants registered, of whom 30 were from civil society. Participants came from 43 participating States.

The main objective of the meeting was to discuss how to improve legislation on hate crimes and identify the barriers to effective implementation of such legislation. The meeting provided an opportunity to consider the current situation in the OSCE regarding investigation and prosecution of hate crimes, and to share good practices in the following areas:

- Legislation on hate crimes (Session I)

- Improving the policing and prosecution of hate crimes (Session II)

- Special challenges posed by violent hate groups (Session III)

The Meeting raised awareness about the need for political leadership to combat hate crimes. It also allowed for a discussion of practices and challenges in this field and assisted participating States in taking stock of their progress in the implementation of commitments in this area.

Since 2006, OSCE human dimension events related to tolerance and non-discrimination have been preceded by civil society meetings where participants formulate recommendations to OSCE participating States and to OSCE institutions. These meetings give civil society the opportunity to discuss current issues and priorities related to the topics of the OSCE conferences, to inform governments of the results of their activities, to share best practices and to engage in coalitions and networks across the region. A Civil Society Side Event Roundtable was therefore held prior to the Supplementary Human Dimension Meeting.

The Roundtable was opened by the Director of the ODIHR, Ambassador Janez Lenarcic, who underlined the need for dialogue between government and civil society, and the unique perspective that the latter could bring to the problem of hate crimes. The Roundtable discussed in particular the gap between commitments and implementation by states and also practical steps to improve performance in response to hate crimes cases. The Roundtable led to the development of recommendations which were read at the opening session of the Meeting and which are listed in the synopsis of recommendations.

The Supplementary Human Dimension Meeting was opened by

Ambassador Mara Marinaki, the Chairperson of the OSCE Permanent Council, and by Ambassador Lenarcic. The scope of the discussion was

framed by Ambassador Lenarcic, who noted that the OSCE has led the way in adopting commitments to combat hate crimes as part of its role as a security organization. These commitments reflect the conviction that hate crimes, if not addressed properly, have the potential to escalate into wider scale violence, endangering social cohesion and affecting the security of individuals and communities. He noted that the current climate of economic insecurity can increase social tensions and make minorities more vulnerable to hate crimes, and more fearful. To combat this, States must ensure commitments lead to better hate crime laws and that they create conditions for implementation of those laws. This would include training for police and for prosecutors, and active cooperation with civil society.

Session I covered a wide range of issues. Laws which criminalize incitement to hatred and different approaches to the extent of the right to free expression were explored. A number of different examples of national laws on hate crimes and discrimination were presented.

There was a consensus on the need to ensure that data is properly collected on hate crimes so as to illustrate the extent of the problem and to enable tracking and monitoring of the phenomenon by law enforcement. This should include disaggregation to show what victim groups are most vulnerable. Some participants commented that countries should see high numbers of recorded hate crimes as a success, and not an embarrassment, since this would demonstrate that outreach by law enforcement is working and that victims have confidence to report hate crimes. Data collection is an area where civil society can add substantial value.

A victim-centred approach to hate crimes was discussed, with speakers pointing out the trauma experienced by victims and the difficulties many face in approaching State authorities.

In Session II the law enforcement response to hate crimes was highlighted by participants. The difficulties for investigators include lack of expertise, the reluctance of many victims to give sensitive information relating to their sexual orientation, their citizenship status or religion, and in some countries restrictions on the type of evidence that can be used to prove suspects' motives.

Participants agreed that there is a need for effective training on hate crimes and on diversity issues, and better representation of minority communities in police forces, as ways to improve the response to hate crimes. The use of specialist police and prosecution units on hate crimes was presented as a good practice.

Participants in Session III discussed the perception that violent organized hate groups present an increasing problem and that there are cross-border elements to this problem. This requires international

cooperation as well as focused police efforts, particularly to deal with the problem of hate groups' use of the Internet. Some participants were wary that this could lead to censorship and felt that monitoring and responding to activities on the Internet was a role for civil society.

Participants also noted that hate groups can be sophisticated in the ways they obtain funding and obtain strategic direction. They change their methods in response to police tactics, so criminal experts must not lag behind.

The participants also pointed out that there are phenomena which can be closely related to hate crimes, such as 'extremism' and terrorism. Lessons can be learned from experience with these issues on how to combat violent hate groups. However, it was stressed that responses to hate speech and hate crime need to be rooted in criminal law, so as not to be used simply to suppress unpopular ideas.

II. SYNOPSIS OF SESSIONS AND RECOMMENDATIONS

This report summarizes the discussions that took place in the course of the NGO roundtable and the three sessions, and presents recommendations proposed by the participants. The recommendations and discussions ranged across a wide set of issues. The recommendations have no official status, are not based on consensus and their inclusion in this report does not suggest that they necessarily reflect the views or policies of the OSCE. Nevertheless they provide useful markers on the progress made and measures still needed to combat hate crimes.

General Recommendations from the Civil Society Roundtable Side Event

Recommendations to OSCE participating States:

-OSCE participating States that have not yet done so, should enact laws that establish hate crimes as specific offenses or provide enhanced penalties for violent crimes committed because of the victim's race, religion, ethnicity, sexual orientation, gender, gender identity, mental and physical disabilities, or other status.

-OSCE participating States should maintain official systems of monitoring and public reporting to provide accurate data for informed policy decisions to combat violent hate crimes. Such systems should include anonymous and disaggregated information on bias motivations and/or victim groups, and should record incidents and offenses, as well as prosecutions.

-OSCE participating States should encourage systems of reporting by third parties for victims unable or unwilling to report hate crimes directly to police and criminal justice agencies.

-OSCE participating States should ensure that those responsible for hate crimes are held accountable under the law and that the record of enforcement is well documented and publicized.

-OSCE participating States should ensure that police and investigators are specifically instructed and have the necessary procedures, resources and training to identify, investigate and register bias motives before the courts, and that prosecutors have been trained to bring evidence of bias motivations and apply the legal measures required to prosecute hate crimes.

-OSCE participating States should ensure thorough

investigations and responses to any reports of harassment and other abuses against hate crime victims.

-OSCE participating States should put in place inspection and evaluation procedures to ensure that police and prosecutors are meeting their responsibilities to investigate and prosecute hate crimes.

-OSCE participating States should conduct outreach and education efforts to communities and civil society groups to reduce fear and assist victims, advance police-community relations, address language barriers, encourage improved reporting of hate crimes to the police and improve the quality of data collection by law enforcement bodies.

-OSCE participating States should develop and implement targeted prevention programs and initiatives to combat hate crimes.

-OSCE participating States should support and encourage ODIHR:

-To ensure that the Law Enforcement Officer Program on Combating Hate Crime (LEOP) has the support it needs and that participating States are taking part in this program.

-To convene regular meetings of the National Points of Contact on Combating Hate Crimes, with the full participation of civil society groups and representatives of specialized anti-discrimination bodies.

-To disseminate widely ODIHR's legislative guidelines on hate crimes.

-To develop a comprehensive capacity building program for civil society organizations and representatives to document and combat hate crime.

-To conduct research on the phenomenon of hate crimes committed by extremist groups.

Session I: Legislation on hate crimes

Moderator:

Ms Alevtyna Sanchenko, Head of Department
for European Integration, Institute of Legislation
of the Ukrainian Parliament

Introducer:

Ms Ilze Brands Kehris, Director, Latvian
Centre for Human Rights, Member of the
Management Board of the EU Fundamental
Rights Agency

A number of participants reported on their country's legal frameworks. The moderator noted that Ukrainian legislation contains provisions on equality and non-discrimination as well as a gender equality

law. The Ukrainian Criminal Code is in the process of being improved, with new articles being introduced, mostly related to aggravating circumstances being considered when passing sentences. A case study from Latvia was given by the introducer, who stated that it can be used as an example, as there are many similar patterns of problems and challenges that transitional and post-socialist countries face. In Latvia, the post-Soviet legacy and a lack of analysis posed

challenges when hate-crime related amendments that were adopted. This has resonance across the OSCE region.

The lack of effectiveness of hate crime-related laws has to do not only with their implementation, but also with the content of the laws themselves. It was emphasized that the question of intent/motive is often difficult to interpret and prove. There is also a common confusion between incitement (hate speech), hate crimes and discrimination which continues to be a challenge in many countries. There was no consensus on how to approach hate speech. Some participants emphasized the importance of protecting freedom of expression. Others noted that it is important that the motivators - i.e. the spokesmen or leaders who incite or provide platforms for hatred - be held accountable, even though they may not be the ones committing the actual acts of hate-based violence.

Different legislative approaches were discussed. In Canada, hate crime-related provisions in legislation allow for increased punishments based on bias motives, while hate propaganda is in a different section of the law, thus making a clear distinction between them. In Belgium, changes to the law in 2007 introduced provisions for increased sentences for hate crime perpetrators, as well as a new mandate for the government agency Centre for Equal Opportunities and Opposition to Racism.

One NGO from Greece expressed the belief that the Greek penal code is inadequate to combat hate crimes, as it excludes bias as an aggravating factor and does not consider the effect of hate crimes on the victim communities. In exercising its right of reply, Greece emphasized that a new hate crime-related law was passed in November 2008, addressing the protected characteristics of race, religion, etc., and allowing for aggravating sentences.

A number of participants noted that ODIHR's Hate Crime Laws: A Practical Guide can assist with the framing and development of hate crime legislation. The following policy questions have to be addressed in hate crime laws and the ODIHR publication will be useful in resolving them: 1) whether hate crimes are a specific category of crime or, alternatively, whether a hate motive is treated as an aggravating factor in sentencing for "ordinary" crimes; 2) which groups should be legally protected against hate crimes (e.g., are lesbian, gay, bisexual and transgender people included); 3) whether the law applies only if motive of hate or hostility can be shown, or if it also applies in any situation in which a victim was selected because of membership in a protected group; 4) whether the law covers crimes against persons associated or perceived to be affiliated with protected groups; and 5) how much evidence of motive is needed for charges to be filed?

The importance of data collection on hate crimes was repeatedly stressed. It was noted that carefully designed classification and

segregation of data is required for the purposes of tracking and monitoring the hate crime situation in a country. Where data on hate crimes is mixed with other concepts or presented only in very broad categories (e.g., extremism or terrorism), it becomes difficult to extract data on specific hate crime categories. The UK noted that it has high numbers of hate crimes recorded, mostly because of a very open recording system; it is important that States see high numbers as a sign that victims have the confidence to report hate crimes. Civil society and victims' voices have been the driving forces for improved hate crime legislation and data collection in the UK. It was noted that it is inevitable that the NGO and state-collected data differ, due to different classifications and labelling of hate crimes.

Surveys and outside sources are important in assessing hate crime situations. An example given was that of the European Union (EU) Fundamental Rights Agency, which surveyed 18,000 respondents across the EU to elicit the proportion who had been victims of hate crimes and discrimination, in response to the serious lack of such data throughout the EU.

It was agreed that training related to the daily practical work of the police, prosecutors and judges is essential to respond effectively to hate crimes.

Participants agreed that civil society can make a great difference. NGOs and authorities must cooperate in the drafting and implementation of hate crime-related laws and in the actual reporting and combating of hate crimes. Local and international cooperation between the relevant actors is crucial to combat hate crimes effectively. The importance of training and outreach activities on combating hate crimes and increased funding for civil society groups working on these activities was advocated.

Some examples were given to illustrate the deep and painful impact of hate crimes on victims and the victim community. Following this, there was a short discussion on the importance of education and outreach programs in order to prevent the occurrence of hate crimes. It was suggested that civil society should be supported financially to work with hate crime victims.

The delegation from France suggested as a good practice a recent initiative adopted there, of creating Anti-Discrimination Desks at each court, including a specially trained judge, tasked with referring victims to relevant anti-discrimination institutions, organizations or lawyers. These special desks and judges assist the victims in receiving adequate information and protection.

Recommendations to OSCE participating States:

-OSCE participating States should conduct professional training and capacity building activities for the relevant institutions and officials dealing with combating hate crimes.

-OSCE participating States should have discuss how to amend and improve hate crime legislation in their particular circumstances.

-OSCE participating States should raise the awareness of relevant officials (law enforcement agencies, prosecutors and judges) on how to apply hate crimes laws and integrate them into daily practical work.

-Authorities should cooperate with NGOs in the drafting and implementation of hate crime-related laws and in reporting and combating hate crimes.

-OSCE participating States should make continued funding available for training and outreach activities on combating hate crimes.

-OSCE participating States should develop special tools for law enforcement bodies on how to properly collect hate crime data and introduce these tools into their daily operations.

-OSCE participating States should ensure that perpetrators of hate crimes are made aware that they are being punished not only for the actual act of violence, but also for the aggravating circumstance of having a bias motive.

-OSCE participating States should fund education and outreach programs as preventive measures against hate crimes.

-OSCE participating States should ensure that motivators are held accountable for inciting hatred, even though they may not be the ones committing the actual acts of hate-based violence.

Recommendations to OSCE institutions and field operations:

-The ODIHR should support programs on hate crime-related data collection tools and training for law enforcement agencies and other relevant institutions.

-The ODIHR should use its publication Hate Crime Laws: A Practical Guide to help relevant institutions and actors dealing with hate crime legislation.

-The OSCE Chair-in-Office's Personal Representative on Combating Intolerance and Discrimination against Muslims should be actively involved in addressing the issue of increased incidents of intolerance against Muslims.

Recommendations to other inter-governmental or non-governmental organizations:

-Civil society should work to assist hate crime victims, including with social services and legal assistance.

-Civil society should cooperate with authorities in the drafting and implementation of hate crime-related laws and in the reporting and combating of hate crimes.

Session II: Improving the Policing and Prosecution of Hate Crimes:

Moderator: Mr. Henk Marquart Scholtz, Secretary General, International Association of Prosecutors, Netherlands

Introducer: Ms Anita Soboleva, Executive Director, Lawyers for Constitutional Rights and Freedoms (JURIX), Russia

Data collection was again discussed. Where official statistics do not reflect the reality, official and non-official data should be crosschecked by independent centres. Sometimes it is not possible to reflect the ethnicity of the victim, because of constitutional limitations. Data disaggregation is important to decide where to allocate resources, but one participant warned that there is a danger of creating a hierarchy of victims. Data can be manipulated to distort the extent to which a group is victim.

A great deal of attention was given to the issue of improving the internal structures and processes of law enforcement agencies. It was suggested that discriminatory attitudes within law enforcement can be changed only through specific instructions and follow-up by higher level management. Codes of Conducts or Ethics can help fight intolerance within police forces. Additionally, it was suggested that police officers should be trained on diversity/sensitivity. Increasing the number of officers from a variety of ethnic backgrounds can increase the level of trust towards the police within the community, especially for members of the groups hired.

A discussion of victim issues noted that sometimes witnesses are afraid to contact police, as they are illegally in the country. Some victims do not want give information about their families or sexual orientation (especially in sexually motivated crimes). Where victims are willing to provide information, law enforcement agencies must be sensitive how they use this information, to protect it to the extent necessary and to take the victim's perception of motive into account. There is a need for political will by law enforcement agencies to protect victims, as well as an understanding that information provided by victims could also be crucial for wider investigations and to prevent further crimes. It was noted that changing police attitudes is a very slow process. EU survey findings show that there is lack of confidence in the law enforcement agencies by some victim groups. Furthermore, it emerges from the survey that victims are not always informed about the mechanisms available to support and help them.

There was a mention Of the need to enhance the gender perspective in case-analysis and hate crimes prosecution. Additionally, it was

suggested that professional training for police should include not only crime investigation, but also training on signs of developing problems of intolerance. Attacks on any group should be monitored as early warning mechanisms. Additionally, police need to be aware of dates or events that can trigger hate crimes, such as dates that are symbolic for skin heads or Nazi groups.

A number of speakers gave examples of specialist law enforcement hate crime units which exist in some countries, including the US at federal level and in the French Gendarmerie. Within the US Department of Justice there is also a special unit on prosecution of hate crimes. In Russia, a special department exists in the Ministry of Interior at federal and at regional levels. The composition of the departments is multiethnic. There is also a research institute on hate crimes. In Germany, there is a complex system to combat hate crimes and there are specially trained police who work in a special unit dealing with politically motivated hate crimes.

The need for training was explored and participants provided examples of the training available in their own countries. In France after attending the Police Academy, police officers attend special training on hate crimes. In the UK, NGOs are involved in training the police on how to deal with hate crimes against disabled people - especially crimes against the mentally disabled - which have increased over the past two years.

It was noted that in EU countries training for judges is organized based on EU Directives. In Latvia, judges themselves have asked for training on hate crime.

Recommendations to OSCE participating States:

- OSCE participating States should disaggregate their statistics by ethnic group; this can help law enforcement to react.

- OSCE participating States should create Codes of Ethics for the police, which should make clear that the police must serve the entire community.

- When recruiting new police officers, OSCE participating States should conduct a sociological analysis of their attitudes with regard to racism; these attitudes should be taken in account as a hiring criteria.

- OSCE participating States should provide training for law enforcement to combat racial prejudices amongst the police.

- OSCE participating States should promote a multi-ethnic composition of the police.

-OSCE participating States should provide very precise instructions to the police on their responsibility to record and investigate hate crimes.

-OSCE participating States should ensure that in case-analysis and hate crimes prosecution a gender perspective is considered.

-OSCE participating States should investigate complaints against police agents, taking into account that police attitudes and behaviour have a major impact on the level of community trust towards law enforcement agencies.

-OSCE participating States should raise the awareness of the police of the signs that a crime is hate-motivated. One way of assisting with this would be to provide police with a checklist of the important indicators of hate crimes which should be taken into account as they record complaints.

-OSCE participating States should raise awareness of hate crimes amongst judges and encourage them to make clear when sentences are more severe because the crime was committed with a bias motive. Such public messages by judges can have a very strong impact in raising awareness.

Recommendations to OSCE institutions and field operations:

-ODIHR should assist States in the early stage of combating hate crimes. This role includes providing training using examples from countries where these activities have been already organised and/or monitoring the functioning of the police.

-ODIHR should support civil society, which has a crucial role in cooperating with the police in the fight against hate crimes.

-ODIHR should be involved in the organisation of training for prosecutors and judges. This training should be tailor-made to the characteristics of the audience and good practices should be used.

Recommendations to other intergovernmental and nongovernmental organizations:

-Civil society should advise victims on their rights.

-Civil society should monitor the functioning of the police.

-Civil society should organise training for staff working with persons convicted for hate crimes during their detention period, in order to raise the perpetrators' awareness of the harmful effects of racism and to help prevent recidivism.

-Civil society should monitor and verify the correctness of official data.

Session III: Special challenges posed by Violent Hate Groups

Moderator:

Mr. Paul Giannasi, Home Office Race
Confidence and Justice Unit, United Kingdom

Introducers:

Lieutenant-Colonel Benoit Ferrand, Deputy
Head of the Counter-Terrorism Division,
Gendarmerie Nationale Headquarters &
Adjutant Jean-Luc Guerre, Deputy Head of
extremist Terrorism Section, Counter-Terrorism

Division, Gendarmerie National Headquarters,
France

The French Gendarmerie has identified a worrying evolution of hate groups: they are increasingly multifaceted, making it difficult to identify actors. Another trend is that local gangs are moving to more structured actions on the national level. Two types of groups commit hate crimes: identity groups and neo-Nazis. Actions range from isolated acts to planned and complex activities including desecration of graves and assassination attempts. Police strategy implemented by specialised units includes: preventative actions, intelligence-gathering using techniques similar to combating terrorist groups, criminal investigations, and improved relationships with victim communities, especially listening.

Many speakers echoed the theme that new technologies are being used and that local groups are beginning to act on a national level. They asserted that Nazism is a pan-European problem and thus requires international cooperation. Combating it requires legislation, targeted investigations, cooperation on the international level, outreach to communities, and demonstrated leadership.

The EU Agency for Fundamental Rights mentioned again its recent survey, which included asking immigrant communities in 27 countries whether perpetrators appeared to be members of hate groups. The report will be finalized towards the end of the year.

Specific examples were raised, such as perpetrators from Russia moving to Ukraine and affecting the neo-Nazi movement there. The situation is evolving quickly and criminal experts are lagging behind. In Russia, neo-Nazis have changed their dress and no longer shave their heads. It is now difficult to single them out in a crowd.

It was noted that while there is sometimes a link between hate groups' activities and terrorist activities, the definition of a hate group varies from country to country. The point was made that everyone should ensure that action against suspected groups does not lead to repression. In the US, for example, there were initiatives in the past that targeted the people who did not present a genuine threat. Therefore, it is important to gather more evidence to determine whether groups are in fact breaking the criminal code.

Conversely, it was noted that hate crimes are frequently committed by isolated individuals, and that during times of crisis, like the present, individuals may take action just because they have seen something on television. Such isolated acts are more difficult for police to investigate.

It was suggested that governments work with NGOs, which have an important role in educating and spreading information. The example

was given of NGOs in the US who have been very successful in sanctioning hate groups' activities (e.g., the Southern Poverty Law Centre used civil law to essentially bankrupt neo-Nazi organizations). If NGOs are allowed to function freely, they can often move against these groups, even without government intervention. The US will have new hate crimes legislation, which will fund educational activities, including NGO programs. NGOs can also provide information to the police about hate groups, what they stand for and how they can be identified.

There was a divergence of opinion among participants regarding the Internet. The Internet has become an increasingly prominent means for communicating, spreading information and financing hate crimes and other racist activities. Many speakers called for a common approach to develop more cooperation among police forces in different countries, recognizing that communications on the Internet travel easily across borders. However, there was also a call for caution by the US, and a reiteration of the need to protect freedom of expression.

Recommendations to OSCE participating States:

- OSCE participating States should ensure cooperation on the international level, including with international organizations and among police forces. Neo-Nazism is a pan-European problem and thus requires international cooperation.

- OSCE participating States should respond to manifestations of hate on the Internet, which is a cross border problem (global issues need global solutions). Although there are legal differences among participating States, there are still grounds for cooperation.

- OSCE participating States which have not already done so should adopt targeted legislation to deal with hate groups.

- OSCE participating States should ensure that targeted investigations are conducted of groups which advocate hate or perpetrate hate crimes.

- OSCE participating States should ensure that their law enforcement agencies reach out to victim communities in order to reassure them, and to obtain better intelligence.

- OSCE participating States should educate their populations about fascism and similar ideologies in order to retain the post-World War II rejection of extremism.

-OSCE participating States should develop mechanisms for identifying possible perpetrators, while taking care not to act against any individual on the basis of his or her appearance and to ensure that all actions against hate crimes are undertaken with full respect for the rule of law and human rights.

-OSCE participating States should develop partnerships between NGOs and governments and encourage NGOs to work on such issues as advocacy and education.

-OSCE participating States should integrate a victims' rights perspective into their activities to combat hate crimes.

Recommendations to OSCE institutions and field operations:

-OSCE and ODIHR should continue to cooperate with national governments to combat hate crimes.

-ODIHR should encourage governments to develop educational programs against racism and bias, including education on the Holocaust.

-OSCE should promote voluntary agreements by Internet service providers that would limit the publishing of hate materials.

-ODIHR should develop and disseminate good practice examples on combating hate groups (with NGOs) and cooperate with NGOs on data sharing.

Recommendations to other intergovernmental and nongovernmental organizations:

-In order to encourage victims and targeted communities to report hate crimes to the police and cooperate with law enforcement agencies in the investigation of such crimes, NGOs should develop programs to accompany victims to police and, if necessary, to act as mediators.

